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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

JOHN DOE 1; JOHN DOE 2; JANE
DOE 1; JANE DOE 2; JANE DOE 3;
and all persons similarly situated,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS;
STEPHEN SINCLAIR,

Defendants,

and

BONNEVILLE INTERNATIONAL,
THE MCCLATCHY COMPANY, and
ANDREA KELLY,

Interested Parties.

NO. 4:21-cv-05059-TOR

JOINT STATUS REPORT AND
PROPOSED DISCOVERY PLAN

I. INTRODUCTION

The Defendants, STEPHEN SINCLAIR and WASHINGTON STATE
DEPARTMENT OF CORRECTIONS, by and through their attorneys of record,

ROBERT W. FERGUSON, Attorney General, CANDIE M. DIBBLE, Assistant Attorney General, and Plaintiffs, JOHN DOE 1; JOHN DOE 2; JANE DOE 1; JANE DOE 2; JANE DOE 3; and all persons similarly situated, by and through their attorneys of record, JOSEPH R SHAEFFER, DANNY WAXWING, DAVID CARLSON, ETHAN FRENCHMAN, HEATHER LYNN McKIMMIE, ANTOINETTE DAVIS, NANCY TALNER, LISA NOWLIN, and KATHERINE FORSTER, submit the following Joint Status Report and Proposed Discovery Plan pursuant to the Notice Setting Telephonic Scheduling Conference, filed June 17, 2021 (ECF No. 82) and Amended Notice Setting Telephonic Scheduling Conference, filed June 21, 2021 (ECF No. 83).

II. REPORT OF PARTIES' MEETINGS

Counsel for Plaintiffs and counsel for Defendants met via email beginning June 21, 2021, and telephonically on June 30, 2021, to discuss the nature and basis of the claims and defenses in this matter, the possibility for a settlement pursuant to Fed.R.Civ.P. 26(f), and the subjects identified in the Notices Setting Telephonic Scheduling Conference. ECF Nos. 82 and 83. Present on the call were Ethan Frenchman and Katherine Forster, for Plaintiffs, and Candie Dibble, AAG, for Defendants. The parties discussed the issues identified below, and Defendants' counsel agreed to file the Joint Status Certificate on behalf of the parties. The items discussed are summarized below.

III. STATUS REPORT

a. whether jurisdiction and venue exist and, if they do exist, the basis for each;

- Venue is proper because at least one named Plaintiff was incarcerated at the Coyote Ridge Corrections Center in Connell, Washington, at the time of the events alleged in Plaintiffs' Complaint.
- The Court has jurisdiction under 42 U.S.C. § 1983, 28 U.S.C. § 1331, and 28 U.S.C. § 1343(a)(3).
- The parties agreed all of the named Plaintiffs have standing with respect to certain claims.

b. whether service of process is complete and, if not, a deadline for completion;

- All named parties have been served or waived service.

c. a brief description of the claims and defenses;

- Plaintiffs claim that Defendants' public disclosure of their private and personal information, including but not limited to their transgender status (including non-binary, intersex, and gender non-conforming status), sexual history, sexual orientation, history of sexual victimization, genital anatomy, and/or mental and physical health information will: (1) constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution; (2) violate Plaintiffs' procedural and substantive due process rights, including their right to informational privacy, under the Fourteenth Amendment to the United States' Constitution; (3) violate Plaintiffs' right to privacy under Article I, Section 7 of the Washington State Constitution; and (4) violate several express and implied exemptions of the Washington Public Records Act, RCW 42.56.

- Defendants' defenses include failure to state a claim, RCW 42.56.060, and any additional defenses to be determined after the completion of discovery.
- d. whether a statute's constitutionality is being challenged, see Fed.R.Civ.P. 5.1, and whether the required notice has been provided;
 - Parties agree that there are no challenges to the Washington State Constitution.
 - Plaintiffs claim in the alternative that if the Washington Public Records Act, RCW 42.56, requires Defendants to publicly disclose their personal and private information, then the Washington Public Records Act is unconstitutional as applied in this case.
- e. whether any issues should be certified to a state supreme court;
 - Defendants and Plaintiffs disagree as to whether and when any issues should be certified to the Washington Supreme Court. This is the subject of a pending motion by Defendants.
- f. suggested deadline for adding additional parties, amending the pleadings, and seeking class certification;
 - October 31, 2021.
- g. whether all non-government corporate parties have filed the necessary ownership statement, see Fed.R.Civ.P. 7.1;
 - Parties agree at this time this section is not applicable.
- h. whether the case involves a minor or incompetent party and whether the appointment of a guardian ad litem is necessary, see LCivR 17(c);

- 1 • Parties agree at this time this section is not applicable.
- 2 i. discovery:
 - 3 • confirmation that initial disclosures, see Fed.R.Civ.P. 26(a)(1), will be
 - 4 accomplished by the time of the hearing;
 - 5 ○ Parties confirm that initial disclosures will be accomplished by
 - 6 July 31, 2021.
 - 7 • subjects on which discovery may be needed;
 - 8 ○ Defendants' policies, practices, and training on the confidentiality of
 - 9 information at issue in this case.
 - 10 ○ Defendants' policies, practices, and training on the use and collection
 - 11 of the information at issue in this case.
 - 12 ○ Defendants' policies, practices, and training on responding to PRA
 - 13 requests, including determining which documents are responsive and
 - 14 what, if any, information should be withheld or redacted prior to
 - 15 production.
 - 16 ○ Defendants' policies, practices, and training for how people in
 - 17 custody may receive gender-affirming treatment including names,
 - 18 pronouns, property, and commissary.
 - 19 • any issues about preserving discoverable information, including
 - 20 electronically stored information;
 - 21 ○ Defendants have issued a litigation hold notice and do not believe
 - 22 there will be any issues about preserving discoverable information.

- 1 • claims of privilege, protection of confidentiality, and proposed
2 confidentiality agreements;
 - 3 ○ The parties agree to develop procedures that will preserve the
4 anonymity of named plaintiffs and class members during the
5 pendency of the case including discovery.
- 6 • proposed agreements reached under Fed.R.Evid. 502;
 - 7 ○ The parties will continue to confer about proposed agreements after
8 the completion of discovery.
- 9 • proposed modifications to the standard discovery procedures, including
10 bifurcation and/or consolidation of discovery, or an increase in the allowed
11 number of depositions (10), interrogatories (25), requests for production (30),
12 or requests for admission (15);
 - 13 ○ The parties agree to modify in good faith so that they can obtain any
14 necessary discovery.
- 15 • suggested expert disclosure deadlines;
 - 16 ○ November 30, 2021.
- 17 • suggested discovery cut-off;
 - 18 ○ January 31, 2022.
- 19 j. anticipated motions and suggested dispositive motion filing deadlines;
 - 20 • Motion(s) for Summary Judgment; March 31, 2022.

1 k. trial:

- 2 • whether a jury has been requested. In cases removed from state court in which
3 a party desires a jury trial, a jury demand must be filed within 30 days after
4 removal, see LCivR 38(d);

5 ○ Because Plaintiffs only seek injunctive relief, there will be no jury
6 trial.

- 7 • suggested trial date(s) and suggested location;

8 ○ June 20, 2022, in Spokane, Washington.

- 9 • anticipated length of trial;

10 ○ The parties anticipate the trial to last 5-7 days.

- 11 • requests for bifurcation; and

12 ○ Not applicable.

- 13 • the need for special audio/visual courtroom technology;

14 ○ The parties agree that only standard computer audio/visual
15 technology to see exhibits and video will be required.

16 l. the likelihood for settlement and the point at which the parties can conduct
17 meaningful dispute resolution, and

- 18 • Settlement and meaningful dispute resolution may be possible following
19 discovery and dispositive motions.

20 m. any other matters that may be conducive to the just, speedy, and inexpensive
21 determination of the action.

- The Parties are not aware of any other matters or issues that need to be addressed at this time.

DATED this 30th day of June, 2021.

DATED this 30th day of June, 2021

ROBERT W. FERGUSON
Attorney General

Munger Tolles & Olson LLP

s/ Candie M. Dibble

CANDIE M. DIBBLE, WSBA #42279
Assistant Attorney General
Attorney for Defendant

KATHERINE M FORSTER,
CA Bar #217609
Attorneys for Plaintiffs

DATED this 30th day of June, 2021.

American Civil Liberties Union of
Washington Foundation

s/ Ethan Frenchman

ETHAN FRENCHMAN, WSBA #54255
Attorneys for Plaintiffs